



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 2, 2003

Ms. Elaine Sample  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2003-4547

Dear Ms. Sample:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183703.

The City of El Paso (the "city") received a request for information relating to an internal affairs investigation by the police department, statements made by police officers and the requestor, and ambulance records. You claim that most of the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. You also inform us that the request for ambulance records was forwarded to emergency medical personnel. We assume that the requested ambulance records have been released, to the extent that the city held or had access to any such records when it received this request for information. If not, then the city must release any such records at this time. *See* Gov't Code §§ 552.301, 302; Open Records Decision No. 664 (2000). We note, however, that chapter 552 of the Government Code does not require the city to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by or on behalf of the city. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

We next note that the city has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part:

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

...

(B) a copy of the written request for information[.]

Gov't Code § 552.301(e)(1)(B). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

As of the date of this decision, you have not submitted a copy of the written request for information, as required by section 552.301(e)(1)(B). Thus, the city has not complied with section 552.301 in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Open Records Decision No. 177 at 3 (1977)* (governmental body may waive law enforcement exception). The city's claim under section 552.108 does not provide a compelling reason for non-disclosure under section 552.302. *But see Open Records Decision No. 586 at 3 (1991)* (need of another governmental body to withhold information under section 552.108 can provide compelling reason for non-disclosure under section 552.302). In failing to comply with section 552.301, the city has waived its claim under section 552.108. *See Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999)* (untimely request for decision resulted in waiver of discretionary exceptions). We note, however, that the city also claims exceptions to disclosure under sections 552.117 and 552.130. As these exceptions can provide compelling reasons for non-disclosure under section 552.302, we will address sections 552.117 and 552.130.

Section 552.117(2) of the Government Code excepts from required public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, regardless of whether the peace officer has complied with sections 552.024 or 552.1175. Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked a police officer's social security number that the city must withhold under section 552.117(2).

The submitted documents also contain the social security numbers of members of the public. These social security numbers may be excepted from public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.<sup>1</sup> See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers in question here are confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the city to obtain or maintain a social security number. Thus, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under the federal law. Furthermore, one of these social security numbers is that of the requestor. The requestor has a special right of access to his own social security number under section 552.023 of the Government Code.<sup>2</sup> Information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of the federal law. Otherwise, we caution you that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number to the public, the city should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Government Code excepts from required public disclosure information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

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<sup>1</sup>Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

<sup>2</sup>See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

Gov't Code § 552.130(a). Information relating to a driver's license, license plate, or personal identification number issued by an agency of the State of Texas or a local agency authorized to issue a personal identification document must be withheld from the public under section 552.130. In this instance, the submitted documents contain a copy of the requestor's Texas driver's license and his Texas driver's license number. The requestor also has a right of access to his own Texas driver's license information, which thus may not be withheld from him under section 552.130. *See* Gov't Code § 552.023. We note, however, that the submitted documents also contain what appear to be other Texas driver's license or personal identification numbers and a Texas license plate number. We have marked that information. If the marked information consists of a Texas driver's license, personal identification, or license plate number, then it must be withheld from disclosure under section 552.130.

In summary, the city must withhold the police officer's social security number under section 552.117(2) of the Government Code. The city may be required to withhold the social security number of a member of the public other than the requestor under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Information relating to a Texas driver's license, license plate, or personal identification number, other than the requestor's Texas driver's license information, must be withheld under section 552.130. The requestor has a special right of access to his own social security number and Texas driver's license information. The rest of the submitted information is not excepted from public disclosure and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

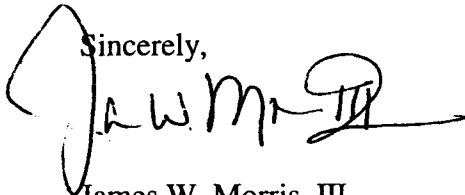
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over a large, stylized circular flourish.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 183703

Enc: Submitted documents

c: Mr. Phillip Deal, Jr.  
11215 Les Peterson Lane  
El Paso, Texas 79936  
(w/o enclosures)